

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ARETHA BROWN,

Plaintiff(s),

v.

HOOTERS OF AMERICA, INC., et al.,

Defendant(s).

Case No. 2:15-CV-1715 JCM (CWH)

ORDER

Presently before this court are Magistrate Judge Hoffman's report and recommendation. (ECF No. 5). Plaintiff Aretha Brown did not file a timely objection to the report and recommendation.

The present action involves allegations that defendants Hooters of America, Inc. and Tyler Eastern, LLC violated Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §§ 1981, 1981a, and 1983. (ECF No. 1-2). On April 18, 2016, Magistrate Judge Hoffman denied plaintiff's application for leave to proceed *in forma pauperis* and ordered that plaintiff submit filing fees or a new application for leave to proceed *in forma pauperis* by May 2, 2016. (ECF No. 4). Neither filing fees nor a new application for leave to proceed *in forma pauperis* have been paid or filed in this matter. On May 11, 2016, Magistrate Judge Hoffman submitted the present recommendation that this case be dismissed without prejudice.

This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party fails to object to a magistrate judge's report and recommendation, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. *See United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review

1 employed by the district court when reviewing a report and recommendation to which no
2 objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003)
3 (reading the Ninth Circuit’s decision in *Reyna–Tapia* as adopting the view that district courts are
4 not required to review “any issue that is not the subject of an objection.”).

5 Nevertheless, this court finds it appropriate to engage in a *de novo* review to determine
6 whether to adopt the recommendation of the magistrate judge.

7 Upon review of the applicable law cited in the report and recommendation, it appears that
8 the magistrate judge has correctly reasoned that this case should be dismissed without prejudice.
9 This court has authority pursuant to *Thompson v. Hous. Auth. of City of Los Angeles*, to dismiss
10 cases “for failure to comply with pretrial procedures mandated by . . . court orders.” 782 F.2d 829,
11 831 (9th Cir. 1986). Before imposing this sanction, the court must consider several factors: “(1)
12 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
13 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
14 cases on their merits and (5) the availability of less drastic sanctions.” *Id.*

15 The magistrate judge has applied these factors to the present case, and this court concurs
16 with the recommendation’s reasoning. (ECF No. 5). Dismissing this case for plaintiff’s failure to
17 follow the magistrate judge’s order would address the delay in this case’s adjudication, allow the
18 court to effectively manage its docket, avoid prejudice the defendants, address the plaintiff’s role
19 in preventing the advancement and disposition of the case on its merits, and substantiate the
20 warning to plaintiff that failure to comply with the magistrate judge’s order may result in the case’s
21 dismissal. (ECF No. 5); *see also in re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d
22 1217, 1227–29 (9th Cir. 2006); *Thompson*, 782 F.2d at 831.

23 Although plaintiff sent a July 28, 2016, letter to the clerk, (ECF No. 6) nothing in that letter
24 follows the instructions of the magistrate judge’s order denying plaintiff’s application for leave to
25 proceed *in forma pauperis*. (ECF No. 4).

26 Accordingly,

27 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and
28 recommendation of Magistrate Judge Hoffman (ECF No. 5) be, and the same hereby are,
ADOPTED in their entirety.

...

...

1 IT IS FURTHER ORDERED that this case be dismissed without prejudice.
2 DATED November 4, 2016.

3 
4 UNITED STATES DISTRICT JUDGE